Editor's note: 88 I.D. 236: appealed, to D.D.C., Civ.No. 81-0749; consolidated with appeal of D.R.Weedon, Jr., 52 IBLA 182 (1981); dismissed, Oct. 9, 1981 (court states that the dismissal was due to Lowey, 517 F.Supp. 137 (D.D.C. 1981)); No appeal was taken. However, Weedon was appealed to D.C. Cir., No. 81-2286 reversed and remanded to Distric Court on Nov. 22, 1982 (due to Lowey 684 F.2d 957 (D.C. Cir. 1982); remanded to Secy. by court order, Jan. 5, 1983.

ESTATE OF GLENN F. COY
RESOURCE SERVICE COMPANY, INC.

IBLA 80-837 Decided January 26, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, canceling oil and gas lease W-56373.

Affirmed in part, vacated in part, and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest--Oil and Gas Leases: First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement

creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is required to disclose this interest at the the time of filing under 43 CFR 3102.7

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Sole Party in Interest--Oil and Gas Leases: Cancellation

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

3. Administrative Procedure: Generally--Appeals--Rules of Practice: Generally--Rules of Practice: Appeals: Generally--Words and Phrases

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

4. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Assignments or Transfers

Where no application for BLM's approval of a transfer of any interest in an offer and lease (if issued) has ever

been filed, BLM should issue the lease, if appropriate, to the offeror only.

5. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Assignments or Transfers--Regulations: Generally

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

APPEARANCES: Thomas W. Ehrmann, Esq., et al. for the Estate of Glenn F. Coy and Resource Service Company, Inc.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Glenn F. Coy, now deceased, filed a simultaneous noncompetitive oil and gas lease drawing entry card offer (DEC) on parcel WY 192 in the July 1976 drawing in the Wyoming State Office, Bureau of Land Management (BLM). This DEC was drawn with first priority, and, effective November 1, 1976, BLM issued oil and gas lease W 56373 to Coy.

On September 21, 1979, BLM rejected the DEC's of Gene Paul James and G. R. Strange, which had been drawn with second and third priorities, respectively, in the drawing for this parcel. The recited basis for doing so was that the lease had been issued to Coy, the first qualified offeror. The decision rejecting James' DEC was sent to the address on his offer card, which probably was his leasing service's address.

On October 5, 1979, Geosearch, Inc. (Geosearch), filed a protest against the continued validity of Coy's offer. Geosearch alleged that Fred Engle, d.b.a. Resource Service Company, Inc. (RSC), had had an interest in Coy's offer at the time it was filed, and that he had not disclosed this interest as required by 43 CFR 3102.7.

Geosearch based its standing to protest on its asserted interest in the second-drawn offer of Gene Paul James, stemming from an agreement dated August 1, 1979, purportedly assigning it such an interest. Significantly, Geosearch's protest papers, filed on October 5, contain a copy of this agreement, which bears a different address for James than that on his card, to wit: 2420 Poloma Vista, Las Vegas, Nevada 89121. Moreover, a telephone number was included.

On October 16, 1979, BLM received back the copy of the decision rejecting James' second-drawn offer which it had mailed to him earlier. The Postal service had marked it "Returned to sender. Addressee unknown." BLM did not attempt to remail this decision to James' address as indicated on his agreement with Geosearch.

BLM, pursuant to Geosearch's protest, notified Coy on October 16, 1979, that it required further evidence concerning any agreement between him and RSC. On November 13, 1979, Coy responded, enclosing a copy of this agreement. On July 17, 1980, BLM issued its decision canceling Coy's lease because this agreement gave Engle an interest in Coy's offer for this parcel, and because Coy had not disclosed this interest

when he filed his offer, as required by 43 CFR 3102.7. BLM also held that it need not consider James' second-drawn offer, as it had rejected this offer on September 21, 1979, and he had not appealed this decision. As Geosearch took its asserted interest from James, BLM held, it had no cognizable interest in the matter. BLM concluded that the lands in the canceled lease would be relisted in the simultaneous system.

Coy and RSC filed a timely appeal of BLM's decision insofar as it canceled Coy's lease. Neither James nor Geosearch appealed, but there is no indication in the record that they were ever served with a copy of BLM's decision. 1/

[1] The agreement between Coy and Fred Engle is the familiar service agreement which we have considered numerous times. D. R. Weedon, Jr., 51 IBLA 378, 87 I.D. (1980); Donald W. Coyer (on Judicial Remand), 50 IBLA 306 (1980); Frederick W. Lowey, 40 IBLA 381 (1979); Alfred L. Easterday, 34 IBLA 195 (1978); Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). We have also considered similar arrangements between other leasing services and their clients. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978). This agreement gave Engle the exclusive right to negotiate for sublease, assignment or sale of any lease rights obtained by Coy, and

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1/ Although Geosearch is named as a party to the decision, the record contains only one return receipt card evincing service, and it is from RSC.

an entitlement to a specific share of the proceeds of any sale and of any retained overriding royalties, whether or not arranged by Engle, for 5 years. This enforceable right was an "interest" as defined by 43 CFR 3100.0-5(b) and existed at the time Coy filed his offer, so that he was required to disclose it under 43 CFR 3102.7. Ibid. As noted in BLM's answer to appellants' statement of reasons, "The very fact that RSC believes that it has an interest in the Coy lease sufficient to give it standing to appeal the BLM decision admits as much."

[2] Cancellation is mandated by 43 CFR 3102.7 here. BLM has the authority to cancel a lease administratively where it discovers, subsequent to issuance, that the lease was granted in violation of regulations governing applications to lease. Boesche v. Udall, 373 U.S. 472 (1963). Specifically, it is proper for BLM to cancel a lease where it discovers that there was an undisclosed interest holder at the time the offer was filed. D. R. Weedon, Jr., supra. We have also held it proper to cancel leases where other defects in the offer are discovered after issuance. Robert A. Chenoweth, 38 IBLA 285 (1978) (insufficient filing fee); Norman Monath, 32 IBLA 392 (1977) (failure to pay advance annual rental); W. H. Bird, 72 I.D. 287 (1965) (offer card filed pursuant to improper scheme giving increased chance of success in the drawing); and B. F. Sandoval, Jr., A-29975 (June 12, 1965), (failure to submit agency statements with offer card). In McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955), the Court held that the Secretary must cancel an oil and gas lease issued in violation of a regulation of the Department.

Appellants Coy and RSC 2/ argue that BLM may not cancel this lease by restrospectively applying the rule in Lola I. Doe, supra, as this offer was filed prior to the issuance of this decision. Appellants contend that the rule in Doe makes a "great leap forward" from prior Departmental regulation and adjudications as to what constitutes an "interest" under 43 CFR 3100.0-5(b) and 3102.7. Accordingly, they argue, the rule in Doe should not be applied retrospectively, citing Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962); Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah 1980); Gertrude H. D'Amico, 39 IBLA 68 (1979); and A. M. Shaffer, 73 I.D. 293 (1966). We conclude that these cases are of no comfort to appellants, as the circumstances here are materially different.

It is true that Doe was the first case to come before the Board in which BLM had discovered that a leasing service's agreement with its clients gave it an enforceable right to share in the proceeds of its clients' offers. However, the rule in Doe was not, as appellants suggest, a departure from any well-established Departmental principles, so that there is no basis for limiting its application to future cases. Gertrude D'Amico, supra. To the contrary, it has consistently been Departmental policy that anyone who, at the time an oil and gas lease offer is filed, has a legally enforceable entitlement to share in the

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2/ RCS's standing to participate in this appeal apparently flows from the interest created by the February 27, 1976, agreement with Coy, as it has not alleged that there has been any other subsequent agreement giving it any interest, or that there is any other basis for appearing.

proceeds from any sale of the lease must disclose this interest at this time, or the offer is void. The reason for this rule is to prevent unqualified persons from avoiding disqualification by using "straw men" to act for them so as to hide their identities and the fact of their disqualification. Disqualifying factors which a person might attempt to hide in this manner include lack of citizenship, status as a Departmental employee (Hill v. Williams, 59 I.D. 370 (1947)), holding maximum acreage of oil and gas leases in a particular state (John H. Trigg, 60 I.D. 166 (1948)), or having violated the rule against multiple filings by making another competing offer for the same parcel. Moreover, the Government is entitled to know the identities of persons who have acquired or who seek to acquire interests in Federally owned lands and/or minerals. W. H. Gilmore, 41 IBLA 25, 30 (1979); see H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979).

The first statement of this policy came on July 23, 1926, 51 L.D. 504 (1926), concerning drawings for canceled oil and gas prospecting permits, which were the predominant vehicle for initiating leases at that time:

> On June 3, 1926, in considering a protest filed as the result of a drawing held in accordance with Circular No. 929 (50 L.D. 387), upon the cancellation of an oil and gas prospecting permit the Department directed that --
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> > Hereafter parties desiring to file applications for participation in drawings of this kind be required to allege that they are filing in their own interest and not in the interest of any other person or persons, association, or corporation; or to show clearly in whose interest if not in their own exclusive interest.

> It must be stated in each application that the applicant files the same in good faith for his or its own benefit, and not directly or indirectly in whole or in part in behalf of any other person or persons, association, or corporation, or if made in the interest of any other person or persons, association, or corporation, a full disclosure thereof must be made, accompanied by a showing of the qualifications of all the interested parties. Any such application filed that does not meet the above requirements will not be allowed to participate in the drawings when held.
>
> Any applicant who fails to disclose any and all interests other than his own which shall tend to give an advantage in the drawing, will forfeit any claim to a return or repayment of moneys tendered with his application and subject the permit, in the event that one is awarded to him, to cancellation for fraud. [Emphasis supplied.]

In 1946, the Department promulgated the first regulation requiring disclosure of all parties in interest to the offer. 43 CFR 192.43 (1946). The regulation was first adopted in its present form on April 21, 1961, 26 FR 3422, first codified at 43 CFR 192.42(e)(3)(iii) (1961), providing as follows:

> (e) Each offer, when first filed, shall be accompanied by:
> * * * * * * *
>
> (3) (iii) A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. All interested parties must furnish evidence of their qualifications to hold such lease interest.

This regulation is presently set out at 43 CFR 3102.7.

Moreover, on June 13, 1970, the Department promulgated a regulation defining an "interest" at 43 CFR 3100.0-5(b) as follows:

> An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

The appellants argue that these regulations are unclear and cite the rule in A. M. Shaffer, supra, 3/ as a basis for excusing their noncompliance. We reject this argument. As we observed in D. R. Weedon, Jr., supra, no one who held or granted the exclusive right to participate in a precise share of any proceeds from the sale or assignment of the lease and from any proceeds derived from retained overriding royalties could possibly entertain any serious doubt that such a right constituted an "interest" within the context of 43 CFR 3100.0-5(b) and

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3/ A. M. Shaffer, supra, involved a good-faith attempt by a filing agent to comply with the regulations. The agent, who had no interest in the offer, incorrectly complied with the regulation requiring disclosure of all interested parties and allowing 15 days to file an interest statement instead of complying with the slightly different agency-statement regulation requiring the filing agent to submit an agency statement with the offer. The Department held that the regulations did not clearly prohibit this procedure and declined to reject the offers.

3102.7. Nor could one doubt that long-standing Departmental policy and regulation required the disclosure of the existence of such an interest at the time the offer was filed. In fact, it is difficult to imagine a more demonstrable form of an "interest" than a written contract guaranteeing a person a share of the proceeds from any sale of the lease, plus a specific share of the proceeds accruing thereafter to overriding royalties retained by the client.

The other cases cited by appellants, Runnells v. Andrus, supra, and Safarik v. Udall, supra, involve situations where a party was following a procedure which had apparently been sanctioned previously by official Departmental decision, so that it was unfair to work a change in procedure without prior notice. The present case is materially different, as the Department had issued no decision condoning a failure to disclose a vested contractual right extant at the time of filing of the offer, or holding that a right such as that created by Engle's contract did not constitute an "interest." 4/ In the absence of such a decision, there was no reasonable basis for Engle and his clients to believe that this practice was beyond the scope of the regulations, which clearly provide otherwise.

4/ Previous to the filing of Coy's offer, the Department had considered two leasing service contracts and determined that they did not create enforceable interests which must be disclosed. In John V. Steffens, 74 I.D. 46 (1967); and R. M. Barton (5 cases), 9 IBLA 243 (1973), 9 IBLA 70 (1973), 7 IBLA 68 (1972), 5 IBLA 1 (1972), and 4 IBLA 229 (1972), it was held that no interest had vested in the leasing service because its entitlement to any lease proceeds was expressly at the client's option and because he was free not to exercise the option. This ruling was followed in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). In contrast, Engle's entitlement vested immediately on formation of his agreement with his clients.

BLM was unaware of the nature of the relationships between Engle and his clients until the protest against Doe's offer brought it to light in 1976. Until this time, no case had arisen in which there was an undisclosed interest created by contract between a leasing service and its clients. BLM and this Board each found that the contract created an undisclosed interest, reaching a result consistent with well-established Departmental policy. In these circumstances, it works no injustice to apply the result of this decision to this case, rather than prospectively. Retail Wholesale and Department Store Union v. NLRB, 466 F.2d 380, 390 (D.C. Cir. 1972).

We note that this case does not present the question of the validity of a purported amendment and disclaimer of this interest by Engle. This offer was filed in July 1976, well before the filing of this amendment and disclaimer in January 1977. Thus, this document, even if legally effective, does not apply to Coy's offer, and references to this document in BLM's decision are inapt.

[3] We cannot affirm BLM's holding in its decision of July 17, 1980, that James' second-drawn offer need not be considered because it had been previously rejected by decision dated September 21, 1979. 5/ BLM's decision rejecting James' offer has never become final, owing to BLM's failure to serve him with it.

5/ We make this determination on our own initiative in the absence of participation by either James or Geosearch in view of the uncertainty as to whether these parties were served with copies of BLM's decision.

"Service" of a decision may be made on a person either by delivering a copy to him or by sending the document by certified mail to his address of record in BLM. 43 CFR 1810.2. BLM did send a copy to James' only address of record on September 21, but this copy was returned on October 16 as undeliverable. However, in the interim, on October 5, Geosearch had filed its protest, which included a new address for James as of August 1979. BLM apparently did not notice this information.

The inclusion of this information in the protest was adequate to inform BLM of James' address of record. Where, as here, the question of whether a person's address of record is correct arises due to the return of mail as undeliverable, BLM should examine the case record thoroughly to see if it contains an updated address. By failing to send another copy of its September 21 decision to James at the address indicated in this protest, BLM failed to send a copy to his last address of record and so failed to serve him.

A person who wishes to appeal a decision adversely affecting him to this Board must do so within 30 days after he is served with the decision. 43 CFR 4.411(a). As James was never served, he may still file a notice of appeal of this decision. Furthermore, James' offer is still viable, as BLM's decision of September 21, 1979, which rejected it has never become final because James may still file an appeal from this decision. 43 CFR 4.21(a); Geosearch, Inc., 51 IBLA 59, 61 (1980).

Normally, we would remand to BLM to mail a copy of the September 21 decision to James' last address of record. However, BLM's subsequent decision canceling Coy's lease has eliminated the basis for the September 21 decision, i.e., that the issuance of the lease to a senior offeror justified rejection of the second-drawn offer. Accordingly, on remand, BLM should vacate the decision of September 21, 1979, and adjudicate James' offer in lieu of relisting this parcel.

[4] Finally, we note that Geosearch does not have a presently cognizable interest in James' offer. 6/ As we held in D. R. Weedon, Jr., supra at 387, 87 I.D. , Geosearch has never applied to BLM for approval of a transfer of any interest in James' offer or lease (if issued) as described in 43 CFR 3106.3-4. While the protest filed on October 5, 1978, does contain a copy of a private agreement between it and James, it is not on proper form, does not contain the required fee or transferee's statement, and does not request approval of such a transfer. 43 CFR 3106.2, 3106.3-4. In any event, BLM could not have approved of such a request, as, at the time the protest was filed, Geosearch had not established its qualifications to hold a lease (43 CFR 3106.1-2) or filed the required interest statement (43 CFR 3106.1-4). See Newton Oil Co., A-30453 (Nov. 30, 1965).

6/ Again, we make this determination on our own initiative in the absence of participation by Geosearch. It is unnecessary to delay our ruling on the question of Geosearch's present interests in order to allow it to appear, as Geosearch has appeared and argued this identical question in D. R. Weedon, Jr., supra.

Nothing in the record shows that Geosearch has subsequently submitted a proper application for approval of such an assignment. An assignment of whatever interest an oil and gas lease offeror may hold is ineffective until it is approved by BLM. See William G. Beanland, 21 IBLA 66 (1975); Amoco Production Co., 16 IBLA 215 (1974). Thus, in the absence of an approved application, BLM may not issue this lease to anyone other than James, if his offer is found to be valid.

[5] The regulations governing transfers recently have been amended and now provide that no offer may be transferred or assigned prior to issuance of the lease. 43 CFR 3112.4-3 (1980). 7/ As Geosearch failed to seek approval of this transfer prior to June 16, 1980, the effective date of this change, it now falls under these provisions. Thus, BLM cannot consider an application for approval of a transfer until after the lease issues. Accordingly, BLM should consider the merits of James' offer and, if appropriate, issue the lease to him, and not in any part to Geosearch. Following issuance, BLM may consider an application for assignment of James' lease (if issued). 8/

7/ This regulation provides as follows:

"No application, offer, lease or interest therein may be transferred or assigned prior to issuance of the lease as evidenced by the signing of the lease by the authorized officer on behalf of the United States as provided in § 3112.4-2 of this title. No agreement or option to transfer or assign such application, offer, lease or interest therein shall be made or given prior to the effective date of the lease or 60 days from the applicant's receipt of priority, whichever comes first. The existence of such an agreement or option shall result in disapproval of the subsequent assignment.

8/ As the issue is not presented for resolution, we do not comment on whether BLM may properly exercise its discretion not to approve this

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, vacated in part, and remanded.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

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fn. 8 (continued)
assignment (if it is submitted for approval after issuance of the lease) because it was not submitted for approval within 90 days of execution of the assignment by the parties. 43 CFR 3106.3-1.